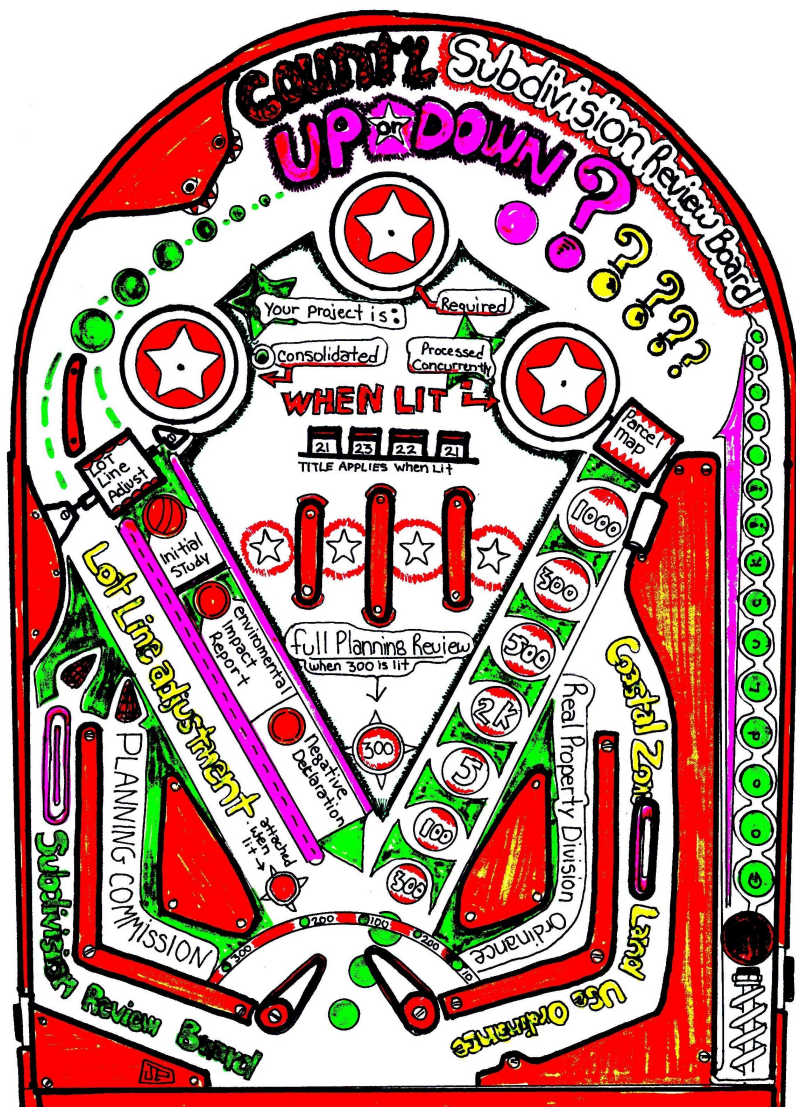


Subdivision Review Board or Planning Commission:

Who Decides?



SUBDIVISION REVIEW BOARD OR PLANNING COMMISSION: WHO DECIDES?

INTRODUCTION

This report is a review of the San Luis Obispo County Planning Department's (planning department) ordinances and operational procedures with respect to the subdivision review board (SRB). The SRB is a decision making body comprised of staff. It sometimes has greater authority over development applications than does the board of supervisors' appointed planning commission. This is because the planning commission decides single, high level permit applications whereas the SRB decides these same applications when consolidated with parcel maps and lot line adjustments; the planning commission does not decide these combined applications even though they involve greater complexity. The SRB (staff) does not represent broad, community interests, unlike the planning commission with a representative from each area of the county. Understanding the responsibilities of the subdivision review board can be challenging due to inconsistent ordinances and conflicting provisions within ordinances.

For purposes of this report:

“Low level application” refers to parcel maps and lot line adjustment applications regulated by Title 21, the Real Property Division Ordinance. Parcel maps are land divisions which create up to four parcels and lot line adjustments revise property lines without creating additional lots. The SRB is the decision maker for such “low level applications.”

”High level application” refers to conditional use permit applications in Title 22, the Inland Land Use Ordinance and to development plan applications in Title 23, the Coastal Zone Land Use Ordinance. These high level applications refer to projects larger in size, complexity and/or with greater potential for impact which are normally heard by the planning commission. However, in many cases, depending on which conflicting ordinance provision is relied upon, when a project involves consolidated/combined processing of both a “high and a low level application” the SRB is the decision maker.

This report focuses on combined project applications assigned to the SRB and examines the following questions:

- Are county planning ordinances consistent?
- Who is the decision maker?
- Is the SRB deciding more complex, higher level projects than the planning commission?
- Can the planning director elevate a project from the SRB to the planning commission?
- Can projects be combined simply to avoid a hearing before the planning commission?
- Is there a possibility for bias in the planning process?
- Are planning ordinances too complex and subject to misinterpretation?

Appendix A provides planning terminology utilized by the county and included in this report.

METHOD/PROCEDURE

Interviews were conducted with planning staff including management. Documents, including Titles 21, 22, 23, department files, as well as internal staff procedures and project processing methods were reviewed. In addition, the planning department provided written answers to questions posed by the Grand Jury.

BACKGROUND

In 1992, the Board of Supervisors streamlined its agenda by creating the subdivision review board (SRB) and moving routine applications to the planning commission and SRB to allow

more time for the board to consider legislative and budget matters. The planning commission consists of five citizens appointed by the board of supervisors. The subdivision review board, also with five members, is composed of the following county department heads or their designees:

1. The director of planning and building
2. The county engineer
3. The director of environmental health
4. The environmental coordinator
5. The air pollution control officer

In 2008, planning staff requested board of supervisors' authority to further broaden the responsibilities of the SRB by giving it approval authority for certain high level permit applications (tract maps, time extensions for tract maps and land use permits) being decided by the planning commission. The supervisors did not adopt staff recommendations, and the planning commission retained the authority to hear these applications.¹

Ordinance Consistency? Consolidated Processing? Who Decides?

Three ordinances, Titles 21, 22 and 23 define the decision maker for various types of projects, specify application processing procedures and physical regulations for land development.

- Title 21 is the Real Property Division Ordinance which implements the California Subdivision Map Act and establishes the SRB and its authority.
- Title 22 is the Land Use Ordinance which governs land uses and development not in the coastal area.
- Title 23 is the Coastal Zone Land Use Ordinance which governs all land uses within the designated coastal zone.

The Grand Jury acknowledges the complexity and difficulty in comprehending these unwieldy ordinances, both for the public and planning staff. The inconsistencies between Title 21 and both Titles 22 and 23, and within each of Titles 22 and 23 are depicted in Table 1, below.

¹ 8/12/2008 County Board of Supervisors agenda

TABLE 1

Permit Application Type	Ordinance Section	Decision Making Body
Parcel Map - With Conditional Use Permit or Development Plan	Title 21 ¹ 21.01.090	SRB ²
Parcel Map - Required Conditional Use Permit Consolidated Processing Section Conditional Use Permit Section	Title 22 22.60.030B1 22.62.060C	Inconsistent PC ³ SRB
Parcel Map - Conditional Use Permit not required Consolidated Processing Section (w/LLA) ⁴ Conditional Use Permit Section	Title 22 22.60.030b 22.62.060c	Inconsistent SRB PC
Parcel Map - Required Development Plan Consolidated Processing Section Development Plan Section	Title 23 23.02.027b1 23.02.034c	SRB SRB
Parcel Map - Development Plan not required Consolidated Processing Section ⁴ (w/LLA) Development Plan Section	Title 23 23.02.027b2 23.02.034c	Inconsistent SRB PC
Conditional Use Permit only (not combined)	Title 22 22.62.060c	PC
Development Plan only (not combined)	Title 23 23.02.034c	PC

1. Title 21 - Does not grant approval authority to the SRB when a “higher” level land use permit application is combined with a lot line adjustment; only land divisions (parcel maps) are allowed to be combined and decided by the SRB.
2. SRB - Subdivision Review Board (comprised of 5 county department heads)
3. PC - Planning Commission (appointed by Board of Supervisors)
4. LLA - An adjustment of a lot line which does not create an additional parcel. One of the lowest permit levels.

When an application is for a land use permit (conditional use permit or development plan) only, the decision maker is clear. However, if a proposed project also involves a land division (parcel map) or lot line adjustment, authorization may be obtained by means of consolidated processing, which creates unwarranted complexities. The inconsistencies contained in Titles 22 and 23, as well as authorizations in Title 21 as to which types applications can be combined and adding the concept that parcel maps can either “require” or “not require” land use permits makes determining the decision maker far from clear. Inconsistencies shown in Table 1 are discussed below:

- Title 22, consolidated processing section 22.60.030B1, authorizes the planning commission to decide one type of low application when it is “required” to be accompanied by a land use permit, while the conditional use permit section of Title 22, 22.62.060c gives authority for the same permit application type to the SRB -- an internal inconsistency. When a land use permit is “not required” conflict exists between consolidating and conditional use permit sections, with 22.60.030b2 designating the SRB and 22.62.060c, designating the planning commission for the same permit application types – another internal inconsistency.
- Title 22, conditional use permits are the same permit types as Title 23’s development plans. They are simply called different names. Title 22.62.030b1 gives decision authority for a conditional use permit to the planning commission, while Title 23, sections 23.02.027b1 & 23.02.034c designates the SRB. Identical project application types are decided by different bodies, according to whether the application falls under Title 22 or 23 -- an inconsistency between Titles 22 and 23.
- Title 23’s consolidated processing section 23.02.027b1 conflicts with section 23.02.034c, development plan, in that when a development plan is “not required” the former section gives SRB decision authority, while the latter gives it to the planning commission. The same permit application types are decided by different bodies -- indicating another inconsistency.

- A further inconsistency occurs when a land use permit is “not required” for a parcel map (sections of Titles 22 and 23 -- 22.060.030b2 and 23.02.027b2, respectively). However, Title 21 does not authorize any consolidation which includes lot line adjustments.

Determining the meaning of “required” and “not required” land use permits in connection with parcel maps was not included in this report. County ordinances do not contain definitions for these terms, nor is there a linkage to sections where they are used.

The Grand Jury thinks that high level project applications, whether “required” or “not required” to accompany lower level applications, should be heard by the higher level authority, the planning commission. It appears that very few permit applications “require” land use permits, among them cluster divisions and condominiums, relatively rare in the county.

Appendix B, prepared by the planning department, is a flow chart of the application process. On this chart, “Permit Types” defines the types of project applications heard by the four decision making bodies. It should be noted that an ordinance inconsistency is revealed on this chart: Under Permit Types for the SRB, lot line adjustments (LLA) are combined with a land use permit and decided by the SRB. Title 21 does not grant this authority to the SRB.

In addition, the Jury learned that the director of planning cannot elevate an application from the SRB to the planning commission. This authority is held by the board of supervisors. This means a project with significant impacts or controversy is often decided by the SRB, without the potential benefit of review by the planning commission.

Referenced sections of the three ordinances are contained in Appendix C.

Avoiding the Planning Commission?

The determination as to which entity decides a project application should be straightforward, depending on the type of permit application. However, as cited above, county ordinances are inconsistent relative to who has decision making authority for consolidated applications.

Review and determination by county staff as the subdivision review board, rather than the planning commission, could, for the applicant, be less costly and not as fully represent community concerns. An additional benefit for the applicant from an SRB decision could be a faster decision.

The Vineyard Center in Templeton, approved by the SRB in 2004, provides an example of ordinance and/or staff processing inconsistency, consolidating high and low level applications and having the SRB rather than the planning commission decide the project.

The project consolidated a high level permit application with a lot line adjustment. In conflict is Title 21, which does not give the SRB authority to approve a combined application that involves a lot line adjustment. Sections of Titles 22 and 23 both allow and then contradict the SRB as decision maker in conflicting sections of both ordinances.

More germane to this discussion is that the lot line adjustment consisted of two 2.5 acre lots before the adjustment and resulted in two 2.5 acre lots following the adjustment. While it appears justifiable since the split was done to preserve an oak grove, this is an example of how a high level application could be presented and consolidated with a low level application and be heard by the SRB, not the planning commission

Potential for Bias in the Planning Process?

The subdivision review board consists of five county department heads and is chaired by the director of planning. Department heads usually designate a staff member to function on the SRB. Two members of the SRB are from the planning department (director, environmental coordinator). Planning staff from the “current planning” division prepares reports with recommendations on projects for submittal to the SRB. The department states they try to have separation; the present SRB chairperson is from the “long range”, rather than the “current”, planning division. However, this separation does not always occur, and with the planning director and the representative from environmental review, the planning department comprises 40% of the SRB’s membership. Further, planning staff confirmed that both planning representatives have attended most SRB meetings during recent years. Contributing to this

situation, the Air Pollution Control District (APCD) representative on the SRB typically votes “no” on all proposed development outside the county’s designated urban reserve area based on a policy contained in the APCD’s Clean Air Plan.² This practice at times, essentially reduces the SRB to four voting members, 50% of whom are from the planning department. Should any one or more of the three non-planning members be absent, along with a potential “no” vote from APCD, the influence of planning representatives could be considerable through preparation of the reports and its proportional representation on the SRB.³

Complexity, Misinterpretation?

Discussions and interviews with planning department staff, as well as issues previously presented confirm the difficulty, complexity and potential for conflicting interpretations of ordinances. Staff had to frequently resort to one or more ordinances to provide answers to specific Grand Jury questions. The three governing ordinances are lengthy and confusing to the lay person. Further, planning staff offered differing interpretations in response to Grand Jury questions.

Of additional concern is that planning staff do not routinely utilize a consistent checklist when processing projects. It was stated that checklists and the online desk manual are mainly used by new planners. High level department staff stated that reliance is placed on the planner’s expertise, and that some planners have developed their own checklists. This “flexible” practice can lead to varying ordinance interpretations and processing variations, contributing to public confusion and frustration about the planning process.

FINDINGS

1. There is inconsistency between and within planning department ordinances Titles 21, 22 and 23, regarding the types of applications to be heard by the planning commission or the subdivision review board. Title 21 is inconsistent with Titles 22 and 23, and there are

² APCD Clean Air Plan, 2001, Chapter 6, L-1

³ SRB meeting minutes 1/9/09 – 3/1/10 indicate 6 of 15 meetings where 1 or more members were absent

inconsistent provisions within and between each of these two titles. Any changes to Title 23 must be approved by the California Coastal Commission.

2. High level applications which can be significant, complex and controversial are often combined with a low level application and decided by the SRB, thereby avoiding hearing before the planning commission.
3. The planning director cannot elevate a project application from the subdivision review board to the planning commission.
4. Planning staff does not routinely use a written “checklist” to ensure ordinance and processing consistency and completeness of applications.
5. The potential exists for decisions made by the SRB to be influenced by the planning department.
6. The Air Pollution Control District’s representative on the SRB typically votes “no” on all development applications outside the designated urban reserve area.
7. Planning regulations are inordinately complicated, difficult, conflicting and almost impossible to understand by the public, and make uniform interpretation by staff difficult.

RECOMMENDATIONS

1. The Board of Supervisors direct the planning department in its next ordinance update to propose amendments to conflicting sections in the Consolidated Processing, Conditional Use Permits and Development Plan sections of Titles 22 and 23 and resolve inconsistencies between these titles and Title 21 as documented in this report. Any changes to Title 23 must be approved by the California Coastal Commission.(Finding 1)

2. The Board of Supervisors direct the planning department to prepare amendments to appropriate sections of Titles 22 and 23 to provide hearing by the planning commission for consolidated projects, whether “required” or “not required”. (Findings 2, 3)
3. The Board of Supervisors grant discretion to the director of planning to elevate certain complex or controversial consolidated or high level project applications from the SRB to the planning commission. (Findings 2, 3)
4. The planning department develop a checklist to ensure ordinance compliance, processing consistency and completeness of project applications. Planners should routinely use this checklist in processing applications. (Finding 4)
5. The Board of Supervisors direct the planning department in its next ordinance update to work on making make these documents easier to read and understand for both staff and the public. (Finding 7)
6. The Board of Supervisors direct the planning department to take appropriate action to ensure that planning department representatives on the SRB will not have any association with projects that will be heard by the SRB. (Findings 5, 6)
7. The Board of Supervisors direct the planning department to prepare an amendment to Title 21 providing that for the SRB, a quorum of four is required and a majority of the quorum is required for any action. (Findings 5, 6)

REQUIRED RESPONSES

The Air Pollution Control District is required to respond to Finding 6 and Recommendation 7. The responses shall be submitted to the Presiding Judge of the San Luis Obispo Superior Court by **August 10, 2010**. Please provide a copy of all responses to the Grand Jury as well.

The County Planning and Building Department is required to respond to Findings 1, 2, 3, 4, 5 & 7 and Recommendations 1 - 7. The responses shall be submitted to the Presiding Judge of the San Luis Obispo Superior Court by **August 10, 2010**. Please provide a copy of all responses to the Grand Jury as well.

The County Board of Supervisors is required to respond to Findings 1 - 7 and Recommendations 1 - 7. The responses shall be submitted to the Presiding Judge of the San Luis Obispo Superior Court by **September 9, 2010**. Please provide a copy of all responses to the Grand Jury as well.

The mailing addresses for delivery are:

Presiding Judge	Grand Jury
Presiding Judge Charles S. Crandall Superior Court of California 1050 Monterey Street San Luis Obispo, CA 93408	San Luis Obispo County Grand Jury P.O. Box 4910 San Luis Obispo, CA 93402

APPENDIX A

AIR POLLUTION CONTROL DISTRICT (APCD) -- The primary agency responsible for achieving clean air standards established by the California Air Resources Board and the U.S. Environmental Protection Agency. Staff monitors air quality, reviews land use projects, develops and enforces rules and regulations, issues permits and creates a long-term Clean Air Plan for San Luis Obispo County.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) – Enacted in 1970, CEQA sets statewide policies that require both state and local agencies to consider the environmental consequences of decisions that involve changes to the environment. CEQA review can require preparation of one of the following documents:

- **Initial Study** – A preliminary analysis of a project to determine if there is potential for environmental damage and determine if further environmental review is necessary.
- **Environmental Impact Report (EIR)** – When it has been determined that a project has the potential to significantly damage the environment, CEQA requires that an EIR be prepared. Significant environmental damages are identified along with methods for reducing or avoiding these damages and project alternatives are developed to reduce or avoid adverse environmental effects.
- **Negative Declaration (ND)** – A statement that a project will not create significant environmental harm, or that environmental damage has been mitigated to a less-than-significant level.
- **Exemption** – Certain types of projects which are not expected to damage the environment are considered exempt from CEQA.
- **Categorical Exemption** -- The California Secretary of Resources reviews candidate

classes and lists them as exempt. Examples include 1) repair, remodel or minor additions to existing facilities, 2) construction of a single family residence, 3) gardening, landscaping or minor grading for a driveway or sidewalk.

CONDITIONAL USE PERMIT -- Highest level land use permit for inland areas governed by the Land Use Ordinance.

DEPARTMENT/ADMINISTRATIVE DECISION -- Minor applications which conform to regulations, approved by department head.

DEVELOPMENT PLAN -- Highest level land use permit for coastal areas governed by the Coastal Land Use Ordinance.

LAND DIVISION -- Creation of additional parcels/lots (includes parcel maps, tract maps, subdivisions). Any real property which is divided into two or more parcels.

LAND USE PERMIT-- Generally, all permits other than those which create or move lot lines. Higher level permits.

PARCEL MAP -- Land division involving four or fewer lots.

PLANNING COMMISSION -- Five individuals, each appointed by a member of the Board of Supervisors, representing the five districts in the county.

SUBDIVISION REVIEW BOARD (SRB) -- Subdivision Review Board is comprised of five county department heads; the county director of planning and building, the county engineer, the county director of environmental health, the county environmental coordinator, and the county air pollution control officer. These county and district officers may designate a staff member to serve in their place as a regular member and a staff member as an alternate member to serve and vote in place of any regular member who is absent or who disqualifies himself . The county

director of planning and building or designated staff member shall serve as chairman of the Subdivision Review Board.

TITLE 21 -- Real Property Division Ordinance -- Regulates divisions of land to promote orderly development of real property, protect purchasers and surrounding landowners, prevent circumvention of existing real property division, zoning and building ordinances and regulations, and ensure adequate services. Implements county general plan and certified local coastal program and adopts provisions of the California Subdivision Map Act.

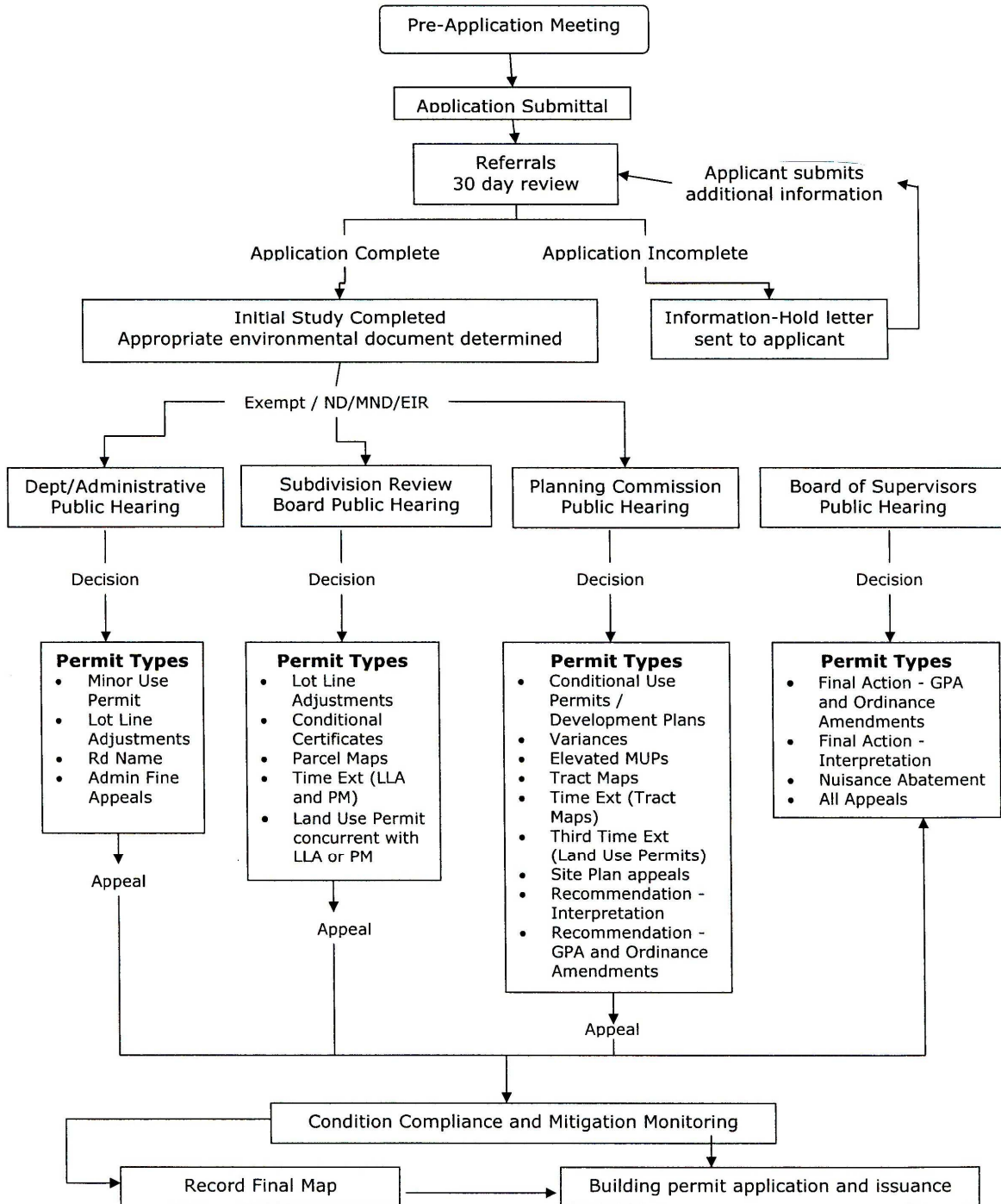
TITLE 22 -- Land Use Ordinance, establishes regulations to implement the General Plan, guide and manage future growth, regulate land use to encourage and support orderly development and beneficial uses of land, minimizes adverse effects on public from inappropriate creation, location, use or design of building sites, buildings, land uses, parking areas or other forms of land development by providing appropriate standards for development and assists the public in identifying and understanding regulations affecting development and use of land.

TITLE 23 -- Coastal Zone Land Use Ordinance, promotes public health, safety and welfare, implements General Plan and County Local Coastal Program, guides and manages future growth of the county, regulates land use to encourage and support orderly and beneficial use of lands, minimizes adverse effects on the public resulting from inappropriate creation, location use, or design of building sites, buildings, land uses, parking areas or other forms of land development, protects and enhances significant natural, historic, archaeological and scenic resources and assists the public in identifying and understanding regulations affecting the development and use of land .

TRACT MAP -- Land division involving five or more lots.

APPENDIX B

The Discretionary Permit Process



APPENDIX C

REFERENCED ORDINANCE SECTIONS

FROM: Title 21: Real Property Division Ordinance Sections

Section 21.02.080 - Establishment of the subdivision review board

The subdivision review board is hereby established and created. The county director of planning and building, the county engineer, the county director of environmental health, the county environmental coordinator, and the county air pollution control officer shall constitute the regular members of the subdivision review board. These county and district officers may designate a staff member to serve in their place as a regular member and shall designate a staff member as an alternate member to serve and vote in place of any regular member who is absent or who disqualifies himself or herself from participating in a meeting of the subdivision review board. The county director of planning and building or designated staff member shall serve as chairman of the subdivision review board.

21.02.090 - Duties of the planning commission and subdivision review board as the advisory agency.

- (a)** The planning commission is designated the advisory agency authorized to approve, conditionally approve, or disapprove tentative tract maps. In addition, the planning commission is authorized to make decisions on adjustment requests for tentative tract maps filed under Section 21.03.020, time extension requests for tentative tract maps filed under Section 21.06.010, and modification requests for recorded final tract maps filed under Section 21.06.060.
- (b)** The subdivision review board is designated the advisory agency authorized to approve, conditionally approve, or disapprove tentative parcel maps, requests for the waiver of the filing of a parcel map as defined in Section 21.02.010(e), lot line adjustments as defined in Section 21.02.030, conditional certificates of compliance as defined in Section 21.02.020, and notices of violation as defined in Section 21.07.020. In addition, the subdivision review board is authorized to make decisions on adjustment requests for tentative parcel maps filed under Section 21.03.020, time extension requests for tentative parcel maps filed under Section 21.06.010, and modification requests for recorded parcel maps filed under Section 21.06.060. [Amended 1993, Ord. 2602]
- (c)** The subdivision review board, as the Review Authority, is authorized to approve, conditionally approve, or disapprove certain land use permit applications that are submitted and filed in conjunction with tentative parcel map applications pursuant to the provisions of Title 22 or Title 23 of this code.

[Amended 1992, Ord. 2581; Amended 2001, Ord. 2943]

FROM: Title 22: Land Use Ordinance Sections

22.60.030 - Consolidated Processing

- A. Land use permit.** If a proposed project involves multiple land uses, project authorization may be obtained by means of a single permit application for the highest permit level required for any of the individual uses. (For example. A commercial center of several stores, proposed to contain a use requiring Conditional Use Permit approval and two uses requiring Site Plan Review, may be authorized by a single Conditional Use Permit approval.)
- B. Land division and lot line adjustment.**
1. Where a land use permit is *required* in conjunction with a land division application, the Review Authority that would otherwise grant the land use permit shall take action.
 2. Where a land use permit is *not required* in conjunction with a land division application but is being processed *concurrently* with the application, the action on the land use permit is delegated to the advisory agency that will take action on the land division or lot line adjustment application.

22.62.060 - Conditional Use Permits

- C. Conditional Use Permit approval or disapproval.** The authority to take final action on a Conditional Use Permit as set forth in this Subsection is assigned to the Subdivision Review Board or Commission. Where a Conditional Use Permit application is required in conjunction with a land division application, the advisory agency designated to take action on the land division by Title 21 of this Code shall consider both the Conditional Use Permit application and the land division application on the same agenda. Final action on the Conditional Use Permit shall occur prior to final action on the land division application. In all other cases requiring Conditional Use Permit approval only, the Commission is assigned to take final action. Decisions of the Review Authority may be appealed to the Board (Section 22.70.050).

FROM: Title 23: Coastal Zone Land Use Ordinance Sections

23.02.027 - Consolidated Processing:

- a. Land use permit.** Whenever a proposed project involves multiple uses, project authorization may be obtained by means of a single permit application for the highest permit level required for any of the individual uses. (For example: A commercial center of several stores, proposed to contain a use requiring Development Plan approval and two uses requiring Minor Use Permit approval, may be authorized by a single Development Plan approval.)
- b. Land division and lot line adjustment.**
- (1) Where a land use permit is required in conjunction with a land division application, Section 23.02.034c shall apply.
 - (2) Where a land use permit is not required in conjunction with a land division application but is being processed concurrently with said application, the action on the land use permit is delegated to the advisory agency that will take action on the land division or lot line adjustment application.

23.02.034 - Development Plan.

c. Development Plan approval or disapproval. The authority to take final action on a Development Plan as set forth in this subsection is assigned to the Subdivision Review Board or Planning Commission. Where a Development Plan application is required in conjunction with a land division application, the advisory agency designated to take action on the land division by Title 21 of this code shall consider both the Development Plan application and the land division application on the same agenda. Final action on the Development Plan shall occur prior to final action on the land division application. In all other cases requiring Development Plan approval only, the Planning Commission is assigned to take final action. Decisions of the Review Authority may be appealed to the Board of Supervisors (Section 23.01.042), and certain projects may also be appealed to the Coastal Commission pursuant to Section 23.01.043.